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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,279	07/31/2003	Keith A. Raniere	FIRS-2992	3766

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SCHMEISER, OLSEN & WATTS
22 CENTURY HILL DRIVE
SUITE 302
LATHAM, NY 12110

EXAMINER

UTAMA, ROBERT J

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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09/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/631,279

Applicant(s)

RANIERE, KEITH A.

Examiner

Robert J. Utama

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-33 is/are pending in the application.
- 4a) Of the above claim(s) 9-16 and 21-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Status of Claim

1. This office action is a response to the applicant's amendment filed on: 07/13/2007.

The current status of claims are as follow: claims 1 and 4-33 are pending, claims 9-16 and 21-33 are withdrawn. Claims 2-3 have been cancelled.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.**

The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 8 is directed toward training with respect to inanimate objects of computer program and data. The specification recites that this step is enabled for an adaptive computer program by finding a "resonance point" of the system. The specification fails to provide how the determination of such "resonance point" can be reached.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 4-8, 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Stratton et al.

Claim 1: The reference Stratton et al provides a teaching for method that is comprised of determining for a given activity a point of efficiency of a trainable subject with respect to at least one parameter (see Stratton page 2 item "Training Program and Maximal Oxygen Consumption) and training said trainable subject at or near said point of efficiency with respect to a state of accommodation until exhaustion occur (see page 1649 item "Study Protocol").

Claim 4 and 18: Stratton teaches that one of the parameter used in the study is one of physical parameter, such as heart rate and blood pressure (see Stratton page 1649 under the heading "Data Collection and Processing).

Claim 5 and 19: Stratton teaches that one of the physical parameter selected is the subject blood pressure (see Stratton page 1649 under the heading "Data Collection and Processing).

Claim 6 and 20: Stratton teaches that one of the physical parameter selected is the subject heart rate (see Stratton page 1649 under the heading "Data Collection and Processing).

Claim 7: Stratton teaches that one of the observed in the study is derived from physical motion (see Radio Ventriculogram page 1649 under the heading "Data Collection and Processing).

Claim 8: Stratton teaches of a training method selected from a group of human (see Stratton Abstract).

Claim 17: Stratton teaches of providing a performance system (a supine exercise machine) and activating it [see Stratton Abstract]. Recording the parameter of the performance system (see kpm in Abstract and FIG. 1 and 2). Measuring the physical parameter of the subject (see Stratton page 1649 under the heading "Data Collection and Processing"). Stratton et al discloses a method of determining for a given activity a point of efficiency of a trainable subject with respect to at least one parameter (see Stratton page 2 item "Training Program and Maximal Oxygen Consumption). Stratton et al discloses a method of exercising a given subject by subjecting the individual to an exercise machine at a given speed setting and slowly

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increasing at the speed of the exercise machine until exhaustion sets in (see Stratton page 1649 under the heading "Training Program and Maximal Oxygen Consumption " and "Study Protocol"). The examiner contends that during the exercise the heart rate and blood pressure will always be at a point of efficiency and by slowly changing the speed of the machines the subject are at a constant state of accommodation. A subject is not in state in accommodation only when the exhaustion sets in and the subject is unable to keep up with the workload given by the supine exercise machine. Stratton also provides a teaching that the training resulting an increase of cardiac output by the training subject, such that the duration the subject can maintain the exercise is changes (see page 1653 "cardiac peak index" and Abstract).

Response to Arguments

6. With respect to the rejection under 35 U.S.C 112, first paragraph, on claim 1; the change in the claim language is sufficient to overcome the rejection. Such rejection has been withdrawn.

7. With respect to the rejection under 35 U.S.C 112, first paragraph, on claim 8. The applicant argues that the specification that describe the computer training program is described in the paragraph bridging pages 21 and 22 of the applicant specification. The examiner has re-examined this part of specification as requested by the applicant. However, the examiner has found that the specification is very limited to the point that it would have constituted undue experimentation for one of ordinary skilled in the art to make or use the invention. For example, the applicant describe to the training method as finding the resonance point (a maximum point of output given an input); however, the applicant's disclosure also fails to provide metric that can be used to measure the input and output relationship of a data or computer program. The applicant also asserts that one of ordinary skilled in the art of adaptive computer programming would know how to determine a resonance point. However,

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this statement appears to be mere opinion since no other evidence can be found. Hence, the rejection under 35 U.S.C 112, first paragraph on claim 8 is warranted and is still in effect.

8. With respect to the rejection under 35 U.S.C 102(b) rejections on claim 1 and 17, The applicant argues that the prior presented failed to provide a teaching for the limitation of "determining for a given activity a point of efficiency ..." The examiner interprets this limitation as an act of "to find out or come to a decision about by investigation, reasoning, or calculation." The teaching of Stratton et al describes a training regime to be conducted a heart rate reserve at around 50-60% or 80-85%. The term "heart rate reserve" is known in the art as a term to describe range of heart rate reached during aerobic exercise, which enables one's heart and lungs to receive the most benefit from a workout. The heart rate reserve value is normally calculated as a function of the user's age and normal resting and maximum heart rate. Hence, the disclosure of a training program being done at around 50-60% or 80-85% would anticipates on the limitation of "determining for a given activity a point of efficiency of a trainable subject with respect to at least one parameter." Since one of ordinary skilled in the art of physical education would be able to determine a point of efficiency using Stratton's disclosure of a heart rate reserve at around 50-60% or 80-85%.

9. Secondly, also argues that the prior art reference fails to provide a teaching of "training said trainable subject at or near the point of efficiency with respect to state of accommodation until exhaustion occur," since the Stratton reference only disclose a training method only on a set period of time. The examiner respectfully disagrees. The Stratton prior art clearly describe a training method where the examiner are trained at a point of activity and continued until exhaustion sets in (see Study Protocol).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pierson, Vicky "Understanding Your Training Heart Rate."

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11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

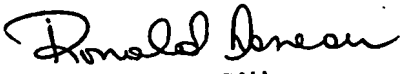
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Utama whose telephone number is (571) 272-1676. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezutto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RU


RONALD LANEAU
PRIMARY EXAMINER

9/17/07